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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF TEXAS

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JOHN A. VALLAIR, III,

Plaintiff,

*versus*

LIEUTENANT MINTOR, *et al.*,

Defendants.

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CIVIL ACTION NO. 1:11-CV-434

**MEMORANDUM ORDER ADOPTING THE MAGISTRATE  
JUDGE'S REPORT AND RECOMMENDATION**

Plaintiff John A. Vallair, III, a prisoner currently confined at the McConnell Unit of the Texas Department of Criminal Justice, Correctional Institutions Division, proceeding *pro se*, brought this civil rights action pursuant to 42 U.S.C. § 1983.

The court ordered that this matter be referred to the Honorable Keith F. Giblin, United States Magistrate Judge, at Beaumont, Texas, for consideration pursuant to applicable laws and orders of this court. The magistrate judge recommends dismissing the case without prejudice pursuant to Federal Rule of Civil Procedure 41(b).

The court has received and considered the Report and Recommendation of United States Magistrate Judge filed pursuant to such order, along with the record, pleadings and all available evidence. No objections to the Report and Recommendation of United States Magistrate Judge were filed by the parties.

Because the statute of limitations would bar future litigation of plaintiff's claims, a dismissal would act as a dismissal with prejudice. A dismissal with prejudice is appropriate only if there is a clear record of delay or contumacious conduct by the plaintiff, and if lesser sanctions

would not serve the interests of justice. *Coleman v. Sweetin*, 745 F.3d 756, 766 (5th Cir. 2014). In this case, plaintiff has exhibited a clear record of delay and contumacious conduct by repeatedly declining to comply with orders regarding the filing fee. Plaintiff has been advised that he is responsible for paying the filing fee, but he has declined to pay the initial partial filing fee or to show good cause for his failure to do so. Title 28 U.S.C. § 1915 sets forth the payment schedule for prisoners seeking leave to proceed *in forma pauperis*. The interests of justice would not be served by allowing plaintiff to proceed without paying the initial partial filing fee set in accordance with the statute and without showing good cause for not paying. However, the court will allow plaintiff to reopen the case by paying the initial partial filing fee, or showing good cause for his failure to do so, within thirty days of the date the judgment is entered.

#### **ORDER**

Accordingly, the findings of fact and conclusions of law of the magistrate judge are correct, and the report of the magistrate judge is **ADOPTED**. A final judgment will be entered in this case in accordance with the magistrate judge's recommendation.

SIGNED at Beaumont, Texas, this 29th day of July, 2014.



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MARCIA A. CRONE  
UNITED STATES DISTRICT JUDGE